EHRC Written Submission to the Taylor Review

Title:	Future world of work and rights of workers Taylor Review of Employment Practices in the Modern Economy
Source of inquiry:	Taylor Review
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For more information please contact

Name of EHRC contact providing response and their office address:	
EHRC, Fleetbank House, Salisbury Square, London, EC4Y 8JX.	
Telephone number:	
Email address:	

About the Equality and Human Rights Commission

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. It contributes to making and keeping Britain a fair society in which everyone, regardless of background, has an equal opportunity to fulfil their potential. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited by the UN as an 'A status' National Human Rights Institution. Find out more about the Commission's work at: www.equalityhumanrights.com

Summary

Growing numbers of people are employed on new types of contracts, such as on agency or zero hours contracts or as self employed in the gig economy. We have defined these as 'atypical' to describe work relationships that do not conform to the standard or 'typical' model of full-time, regular, open-ended employment with a single employer over a long time span.

The Commission believes the Government has an important role in creating an entrepreneurial and job creating private sector which allows for flexibility for employers and workers. Employers suggest that atypical employment relationships may offer people benefits such as flexible working hours, and a sense of independence and control over the work they do, that they may not get in typical

work relationships. However, atypical employment may also pose a risk to individual's enjoyment of employment rights.

Government has a role in ensuring people's rights at work are respected, particularly in relation to those who are most vulnerable to exploitation. While technology is creating new models for business growth and ways of working, it needs to be built on a firm foundation that provides fair access to work opportunities to all and that provides protection to all.

The Commission is concerned that the rise of atypical work arrangements may undermine people's rights under the UN International Covenant on Economic, Social and Cultural Rights (ICESCR). The UK, is party to this Covenant which places a duty on states to protect these rights. It also risks undermining the UK's commitment to the UN Guiding Principles on Business and Human Rights which encourages the state to protect human rights, businesses to respect human rights and for both parties to have in effective remedies in place for individuals to seek redress when their rights have been breached.

Articles 6 and 7 of ICESCR require the state to take steps to recognise: the right to work; fair and equal pay for equal value of work; a decent living; safe and healthy working conditions; rest, leisure, reasonable limitations of working hours and paid holidays. Domestic law provides employees and workers with these ICESCR protections. However, our research on employment practices in the meat and poultry processing sector[1] and on pregnancy and maternity discrimination,[2] found that agency, casual and zero hours contract workers were treated worse than directly employed workers, for example being paid less than other workers or working in conditions putting their health and welfare at risk.

The right to work (Article 6) operates with the right to freedom from discrimination (Article 2(2)). This places an obligation on Government to protect against discrimination and to recognise that some groups experience more difficulty than others in accessing work. The Equality Act 2010 is the legal framework protecting equality. However, our research shows that even though employment rates are at record highs, young people, some ethnic minority groups and disabled people are the least likely to be in employment.[3] If they are working, then they are more likely to be in atypical employment that is low paid and insecure despite wanting to work

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[1] EHRC. 2010. Inquiry into recruitment and employment practices in the meat and poultry processing sector. Available at: www.equalityhumanrights.com/en/inquiries-and-investigations/inquiry-meat-and-poultry-processing-sectors/download-inquiry-report

[2] BIS / EHRC. 2016. Pregnancy and Maternity – Related Discrimination and Disadvantage: the experience of mothers. Available at: https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity-workplace/pregnancy-and-maternity-discrimination-research-findings

[3] EHRC. 2015. *Is Britain Fairer?* Supporting Evidence Paper. G: Productive and Valued Activities: https://www.equalityhumanrights.com/en/britain-fairer/britain-fairer-report/supporting-evidence/productive-and-valued-activities-domain

more hours. The predominance of low paid, part time work among these groups also contributes to gender, disability and race pay gaps.

Article 8 of ICESCR guarantees rights to trade union association. However, trade union membership, collective bargaining structures and joint consultative committees have declined significantly over the last 40 years.[4] Workers who are migrants, on temporary agency contracts, and in low paying jobs are much less likely to be unionised than UK born, permanent and higher paid workers – a trend confirmed by our own research – making it more difficult for them to seek redress. This makes it all the more important that all workers should enjoy rights under ICESCR, and receive the same protections in law regardless of contractual status.

We believe that there is much Government can do to remedy matters:

- Workers should have better access to information about their employment status and their employment rights, and know where to go if they have a complaint or need to access redress.
- Employers should have better access to information about employer responsibilities and employment rights.
- Government should ensure that its commitment to the UN Guiding Principles on Business and Human Rights and expectations on businesses are widely understood by businesses.
- Companies that do not operate lawfully must be held to account to create a level playing field and avoid unscrupulous businesses undercutting organisations which incur financial costs to comply with the law.
- To ensure effective enforcement, the agencies enforcing employment rights and our laws about the national minimum wage and modern slavery should have sufficient resources to meaningfully monitor and enforce compliance.
- Government should clarify the law since old definitions for employment status do not easily apply to new ways of working. This is leaving individuals without the rights they should expect, could limit the effectiveness of our enforcement agencies, and contributes to making Britain a place which is not fair for everyone.

Introduction

The Commission welcomes this independent review into employment practices in the modern economy. Technology is creating new models for business growth but this needs to be built on a firm foundation that provides fair access to work opportunities to all and that provides protection to all.

[4] Freedom of Association is also a qualified right under the ECHR.

Growing numbers of people are employed on new types of contracts, such as on agency or zero hours contracts or as self-employed in the gig economy. We have defined these as 'atypical' to describe work relationships that do not conform to the standard or 'typical' model of full-time, regular, open-ended employment with a single employer over a long time span. We use the terms 'atypical' and 'typical' work, workers and employment to describe this relationship. In the past five years, the number of agency workers increased by 30% to 865,000.[5] ONS estimates that 903,000 people, representing 2.9% of the employed workforce, were on zero-hours contracts as their main job during April to June 2016.[6] TUC estimates that 1.7 million people are in low paid self-employment, including people working in the 'gig economy' who use internet platforms to get work.[7] Of those in temporary employment in 2013, 40% had been unable to find a permanent job, up from 25% in 2008.[8]

1. Security, pay and rights

1.1 To what extent do emerging business practices put pressure on the trade-off between flexible labour and benefits such as higher pay or greater work availability, so that workers lose out on all dimensions?

Employers suggest that atypical employment may offer some people benefits they may not get in typical employment relationships, such as a sense of control and independence over when they work and how much they work.[9] Atypical work may also help people avoid inflexible working arrangements or committing to a permanent position in a job they do not like.[10]

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[5] Judge L. and Tomlinson, D. December 2016. Secret Agents. Agency workers in the new world of work. Resolution Foundation. Available at: www.resolutionfoundation.org/media/blog/is-agency-work-the-forgotten-face-of-the-uks-modern-workforce/

[6] ONS. September 2016. Contracts that do not guarantee a minimum number of hours. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contractsthatdonotguaranteeaminimumnumberofhours/september2016

[7] TUC. December 2016. Living on the Edge. The rise of job insecurity in Britain: https://www.tuc.org.uk/economic-issues/labour-market/living-edge

[8] EHRC 2016. Is Britain Fairer? The state of equality and human rights 2015: https://www.equalityhumanrights.com/en/britain-fairer/britain-fairer-report

[9] See for example, Uber's submission to the BEIS' inquiry on the Future World of Work. January 2017. http://www.parliament.uk/business/committees/committees-a-z/commons-select/business-energy-industrial-strategy/inquiries/parliament-2015/the-future-world-of-work-and-rights-of-workers-16-17/publications/ and Hermes submission to the same inquiry, March 2017: http://www.parliament.uk/business/committees/committees-a-z/commons-select/business-energy-industrial-strategy/inquiries/parliament-2015/the-future-world-of-work-and-rights-of-workers-16-17/publications/

[10] Recruitment and Employment Confederation's submission to the BEIS Future World of Work Inquiry. January 2017. Available at: http://www.parliament.uk/business/committees/committees-a-z/commons-select/business-energy-industrial-strategy/inquiries/parliament-2015/the-future-world-of-work-and-rights-of-workers-16-17/publications/

However, on the whole, atypical employment relationships offer far greater benefits to employers than workers as atypical arrangements offer employers flexibility in workforce usage and reduced costs. For workers in these types of jobs, increased flexibility is associated with insecurity, lower pay and loss of employment protections.

Research suggests that atypical work relationships provide advantages for employers.[11] These include:

- Access to a scalable workforce, drawn upon and paid only when they are needed, thereby reducing the costs of unproductive moments at work and keeping transaction costs low.
- Access to 'self-employed' labour without any of the usual associated costs, such as National Insurance and pension contributions, employment protections, such as holiday and sick pay, and liability and insurance risks.
- Reliance on user ratings to ensure a high quality service and avoid the costs of internal performance review processes by digital platform operators.

Research suggests that atypical work relationships result in disadvantages for workers. These include:

- lower pay[12]
- difficulty in transitioning into permanent work[13]
- under-employment[14]
- lower well-being due to difficulties in managing the unpredictability of income and working hours[15]
- a lack of redress.[16]

1.2 To what extent does the growth in non-standard forms of employment undermine the reach of policies like the National Living Wage, maternity and paternity rights, pensions auto-enrolment, sick pay, and holiday pay?

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[11] De Stefano V. February 2016. The Rise of the "Just-in-Time Workforce": On-demand work, crowdwork and labour protection in the "Gig-Economy". Comparable Labor, Law and Policy Journal. Vol. 37. pp 621-625.

[12] For example, agency work carries a pay penalty of around 22p per hour. CIPD. 2013. Zero hour contracts: Myth and reality: http://www.cipd.co.uk/binaries/zero-hours-contracts_2013-myth-reality.pdf

[13] For example, three-quarters of all agency workers are full-time and three-fifths would like permanent employment, suggesting that agency work is their main source of earnings. Judge L. and Tomlinson, D. December 2016. Secret Agents. Agency workers in the new world of work. Resolution Foundation: www.resolutionfoundation.org/media/blog/is-agency-work-the-forgotten-face-of-the-uks-modern-workforce/

[14] For example, on average, people on zero hours contracts work 25 hours a week; 31% want more hours in their current job compared to 10% of people in traditional employment. ONS. September 2016. Contracts that do not guarantee a minimum number of hours. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contractsthatdonotguaranteeaminimumnumberofhours/september2016

[15] New Economics Foundation. Wellbeing at Work. A Review of Literature. P.25,. Available at: http://b.3cdn.net/nefoundation/71c1bb59a2ce151df7_8am6bqr2q.pdf;

[16] See, for example TUC. December 2016, *Op Cit.*

We are concerned that atypical work relationships may undermine existing employment rights. Unless Government finds a way to tighten up the legislative framework, atypical work relationships will undermine Government's commitments to rights set out in the UN International Covenant on Economic, Social and Cultural Rights (ICESCR) and the UN Guiding Principles on Business and Human Rights (UNGPs). ICESCR is one of two treaties that gives force to the Universal Declaration of Human Rights and provides rights that enable people to live in dignity. The UNGPs encourage states to protect human rights, businesses to respect human rights and for both parties to have effective remedies in place for individuals to seek redress when their rights have been breached.

We are concerned that atypical work relationships may not guarantee workers:

- the right to work; fair and equal pay for equal value of work; a decent living; safe and healthy working conditions (ICESCR Article 6 and 7,UNGPs "Protect")
- the right to rest, reasonable limitation of working hours and periodic holidays with pay (ICESCR Article 7, UNGPs "Protect")
- the right to redress for problems at work or the right to freedom of association and collective bargaining (ICESCR Article 8, UNGPs "Remedy")

We believe that all workers, regardless of contractual status, should enjoy rights under ICESCR. Particularly for those in the gig economy, the lack of clarity around their self-employment status allows employers to avoid providing workers with the legal protections to which they may be entitled.[17] For example, maternity and paternity pay and leave and the right to request flexible working are only available to employees.

It does not seem right that employers can rely on agency workers over a long period of time without converting the relationship to one of permanent employment, or that employers rely on agency workers but terminate contracts before the 12 weeks qualifying period has ended to avoid granting additional entitlements.[18]

Our research has found that some employers are less likely to comply with legislation or, at the very least, disadvantage those on agency or zero-hours contracts.

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[17] See, for example: Citizen's Advice Bureau and New Policy Institute. 2015, Who are the self employed? www.citizensadvice.org.uk/Global/CitizensAdvice/Work%20Publications/Whoaretheselfemployed.pdf

[18] Department for Business, Innovation and Skills. 2013. 'Employment perceptions and the impact of employment regulation', Employment Relations Research Series: Available at: www.gov.uk/government/publications/a-research-paper-on-employer-perceptions-and-the-impact-of-employment-regulation

- Mothers on agency, casual or zero hours contracts were more likely than the average for all mothers at work to have negative and potentially discriminatory experiences which could undermine the reach of Equality and Health and Safety legislation.[19] They were less likely to say their employer initiated discussions on work-related risks (46% vs 62% average) and were more likely to report experiencing a risk or impact to their health or welfare and that their employer was unhappy about them taking maternity leave (22% vs 8% average).

- Our 2010 inquiry into employment practices in the meat and poultry processing sector;[20] found that more than 80% of workers believed agency workers were treated worse than directly employed workers. They received lower pay, were allocated the least desirable jobs, and believed they were treated like 'second-class citizens' in the workplace.

- Our research on employment practices and conditions in the cleaning industry,[21] echoes wider research[22] that there is low trade union representation among the lowest paid, making access to redress difficult. Outsourcing has had an impact on unions' ability to organise a workplace. Trade unions must now secure recognition agreements with each employer at a site and then negotiate separate collective agreements.

- Research shows atypical workers lack information and clarity over their employment status and associated rights, including whether they are eligible for the National Minimum Wage as well as where to go if they have concerns or want to make a complaint.[23] The Commission has produced 'Know your Rights' resources for workers and employers in the cleaning industry. Government should ensure all workers have access to information about their rights.[24]

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[19] BIS / EHRC. 2016. *Op cit.*

[20] EHRC. 2010. *Op cit.*

[21] EHRC.2014. Research report 96: Coming clean: contractual and procurement practices. Available at: www.equalityhumanrights.com/en/publication-download/research-report-96-coming-clean-contractual-and-procurement-practices

[22] European Work and Employment Research Centre (2015) Reducing Precarious Work through Social Dialogue. Available at: http://www.research.mbs.ac.uk/ewerc/Our-research/Current-projects/Reducing-Precarious-Work-in-Europe-through-Social

[23] One quarter of gig economy workers say they do not know where they would go if they wanted to complain or seek compensation about their experience of working in the gig economy, with a further 17% saying they would never make a complaint or seek compensation. CIPD. March 2017. To gig or not to gig? Stories from the modern gig economy. Survey Report: https://www.cipd.co.uk/knowledge/work/trends/gig-economy-report

[24] Both government and trade unions recommended the taskforce's approach to raising awareness of workers' rights in roundtable events to inform the future work of the new Director of Labour Market Enforcement . EHRC. 2015. Know Your Rights Briefing Pack for Business. https://www.equalityhumanrights.com/sites/default/files/ehrc_briefing_pack_updated_may_2016.pdf

- Our research in the meat and poultry processing and the cleaning sectors showed that workers were often unaware of how to air concerns or feared victimisation for doing so. We have produced guidance on handling human rights complaints applicable to all businesses.[25]

- Poor employment practices are often associated with lower paid work, regardless of whether it is in traditional or atypical employment. E.g. the EHRC's inquiry into the meat and poultry industry and our assessment of the cleaning sector found evidence of working time breaches, failure to pay sick pay or holiday pay and in the meat and poultry sector, failure to provide adequate health and safety equipment. These issues can, in some cases, be a part of an overall pattern of exploitative labour conditions.

2. Progression and training

How can we facilitate and encourage professional development within the modern economy to the benefit of both employers and employees?

We welcome Government's commitment to remove barriers to social mobility. We believe a failure to train and develop staff employed on atypical contracts can be a real barrier to people reaching their potential and maximising the human capital we need in a post Brexit economy. We recommend that Government and employers offer greater support to people on both typical and atypical contracts to access training that can improve their skills as well as contribute to the growth of business.

Research evidence on barriers in access to training

- Research suggests that those in atypical employment relationships are less likely than those in typical employment relationships to receive training and development to help improve their skills and thereby progress out of low paid and low skilled work. The biggest barrier is affordability.[26]

- Our study into the commercial cleaning sector showed that cleaning companies were less likely to train their own employees when they secured short cleaning contracts lasting one year. There may be even less of an incentive for firms to develop workers who they can access as and when they need them.

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[25] EHRC. December 2017.Handling and resolving human rights complaints about your business: https://www.equalityhumanrights.com/en/advice-and-guidance/handling-and-resolving-human-rights-complaints-about-your-business

[26] CIPD. March 2017. To gig or not to gig? Stories from the modern gig economy. Survey Report: https://www.cipd.co.uk/knowledge/work/trends/gig-economy-report

- Our research also showed that some cleaning companies believed their workers were their greatest asset and sought to train and develop them. This helped them to ensure a good service for the customer whilst reducing staff turnover.

Our views

- We believe that all atypical workers should have access to the same training and progression opportunities as other workers in order to develop people to their best potential.

- We are concerned that there may be fewer opportunities to progress in the gig economy as jobs may be low-skilled or repetitive or intermittent. Government should encourage gig economy companies to consider ways to identify talent within their organisations in order to develop their workers in the expectation that this may contribute to greater productivity in an organisation.

- While there are barriers to training opportunities for atypical workers, there are also significant barriers for typical workers.[27] We believe there needs to be greater support to help people in both typical and atypical employment to access training that can improve their skills as well as contribute to the growth of business. We welcome the Government's commitment to develop and increase skills as set out in its Industrial Strategy green paper and we hope that its review of careers advice will lead to support for all people of all ages.[28]

3. The balance of rights and responsibilities

Do current definitions of employment status need to be updated to reflect new forms of working created by emerging business models, such as on-demand platforms?

We believe there is merit in looking at the definition of the employer in order to determine the existence of an employment relationship since old definitions for employment status do not easily apply to new ways of working. This places an obligation on the most relevant party and offers a simpler way to consider whether they are under any duties to the labour providers.[29]

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[27] *Ibid.*

[28] HM Government. 2017, Building our industrial strategy green paper. P.45: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/586626/building-our-industrial-strategy-green-paper.pdf

[29] In some countries, like the Netherlands and Spain, there is a statutory presumption in favour of an employment relationship existing after a certain time and an employer is required to provide evidence to rebut the presumption.

Current definitions and legal tests for categorising employment relationships were developed in the context of more stable employment patterns. These definitions can be more difficult to apply to atypical work relationships.

The fact that employment status must be determined by an employment tribunal based on detailed analysis of the facts means that it is not understood by the ordinary person.

In the gig economy, the digital platform operators maintain that they are technology firms providing opportunities for labour providers who are self-employed contractors. Labour market analysts suggest that the labour providers are better defined as workers[30] and the platforms as employers.[31] Academics have suggested that digital platforms function as an employer as they:

- control the start and end of the employment relationship;
- accept the labour and the results of this labour from labour providers;
- offer work and pay through the digital platform;
- manage the internal market of the business by determining how work is performed and by setting and monitoring standards; and
- manage the external market of the business by determining pricing models and branding in a global market.

The Commission has funded cases relating to determining the employment status of workers:

- Pimlico Plumbers v Smith. The Court of Appeal ruled that Smith was a worker rather than an 'independent contractor', and should be protected by equality law.
- The Commission has also recently funded a doctor's employment status challenge against a private hospital which said she is an 'independent contractor' rather than a worker and therefore should not be protected by equality law.

We believe legislation should provide protection to individuals so that employers cannot rely on employment contract clauses that have the effect of classifying an individual as self-employed rather than a worker. This is particularly evident with atypical work where the classification as self-employed does not seem to reflect the reality of the employer's control over the working time, tasks and pay of the individual.

We recommend that Government should clarify the law since old definitions for employment status do not easily apply to new ways of working. This is leaving

[30] See for example De Stefano V. February 2016. *Op Cit.* and Policy Journal. Vol. 37. pp 621-625; and Prassl, J. and Risak, M. March 2016. Uber, Taskrabbit and Co.: Platforms as Employers? Rethinking the legal analysis of crowdwork. pp 619-652

[31] *Ibid.*

individuals without the rights they should expect (as set out in section 1.2), could limit the effectiveness of our enforcement agencies, and could contribute to making Britain a place which is not fair for everyone.

4. Opportunities for under-represented groups

How can we harness modern employment to create opportunities for groups currently underrepresented in the labour market (the elderly, those with disabilities or care responsibilities)?

We believe it is important to have a variety of different types of employment to suit the needs and interests of employers and workers, while ensuring that all workers benefit from the same protections in law. More flexible work practices at different levels of an organisation may open work opportunities to people with disabilities who have low employment rates, and also contribute to reducing gender, disability and ethnicity pay gaps.

Certain groups are more likely to be in atypical work:

- Younger and ethnic minority workers are more likely to be in low paid and insecure work.[32]
- 20% of agency workers are aged 16 to 24 and while 80% of agency workers are white, 8% of all Black workers in the UK are in agency work.[33]
- Workers on zero-hours contracts are more likely to be young, part-time, women, or in full-time education when compared with other people in employment.[34]
- Asians and disabled people were most likely to be in part-time jobs that they would prefer to be full time. At the end of 2016, 13.3% of part-time workers said they could not find full-time hours and 29.8% of temporary workers were could not find a full-time role.[35] Over 3.3 million people in work wanted more hours.[36]
- Women, some ethnic minority groups and disabled people are most likely to be in low paid, part-time work with few opportunities for progression. This contributes to gender, ethnicity and disability pay gaps. Pay gaps are a measure of the difference in average hourly pay between different groups and a good indicator of inequalities in access to work, progression and rewards.

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[32] TUC. 2016. Op cit.
[33] *Ibid*
[34] ONS. September 2016.Op cit.
[35] ONS. Statistical bulletin. UK labour market: Jan 2017. Table EMP01: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/fulltimeparttimeandtemporaryworkersseasonallyadjustedemp01sa
[36] ONS. Feb 2017. Labour Market Statistics: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/underemploymentandoveremployementemp16

Flexibility vs atypical work

In our view access to flexible working is important for employers and workers but access to flexible working should automatically come with rights and protections.

Evidence shows that flexible work:

- Helps parents to balance work and family needs.[37]
- Allows workers to supplement their regular earnings.[38]
- Helps some disabled people to manage an impairment and to stay in work. It can help them avoid some of the barriers they face to obtaining and maintaining employment including: difficulties in getting employers to make reasonable adjustments,[39,40] discrimination in recruitment,[41] difficulties with transport and workplace access, negative attitudes, and bullying and harassment at work.[42]

Atypical employment may offer similar advantages but only if it offers workers employment rights, including the right to request flexible working. Flexible working would mean that workers could change their working patterns, for example, to assist with childcare arrangements or to manage an impairment, without being penalised for it. The Commission has called on Government to extend the right to request flexible working as a day one right and open up all jobs, including high level roles, to part-time and flexible working as a way to open up work opportunities and support progression at work for different groups. We consider this a fairer approach to

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[37] BIS / EHRC. 2016. Pregnancy and Maternity – Related Discrimination and Disadvantage: the experience of mothers.

[38] . CIPD. March 2017. *Op Cit.*

[39] EHRC research in 2012 found that disabled people and employers were unclear about their rights and obligations with some employers regarding reasonable adjustments as discretionary. See: EHRC (2012) Working better: the perfect partnership – workplace solutions for disabled people and businesses, available here [accessed 4 January 2017]. More recently the EHRC reported that a quarter of disability discrimination-related EASS helpline enquiries concern failures to make reasonable adjustments in employment. EHRC Written evidence to the House of Lords Select Committee on the Equality Act 2010 and Disability, September 2015. http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/equality-act-2010-and-disability-committee/equality-act-2010-and-disability/written/20699.html

[40] Disabled adults consider that appropriate support or adaptations, particularly opportunities for flexible working and reduced working hours would have helped them stay in work. See: Meager and Higgins (2011) Disability and Skills in a Changing Economy. London: UK Commission for Employment and Skills. Available here: http://www.employment-studies.co.uk/resource/disability-and-skills-changing-economy

[41] Davidson, J. (2011) A qualitative study exploring employers' recruitment behaviour and decisions: small and medium enterprises. DWP Research Report No 754, Available here [accessed 10 January 2017].

[42] Adams, L. and Oldfield, K. (2012) Opening Up: The Views of Disabled People and People with Long-term Health Conditions. EHRC. Research Report No. 77. Available here [accessed: 30 September 2015]; and
Coleman, N., Sykes, W. and Groom, C. (2013), 'Barriers to employment and unfair treatment at work: A quantitative analysis of disabled people's experiences'. EHRC Research Report 88. Available here [accessed: 14 July 2016]

managing the needs of workers and employers without undermining employment rights.

Creating work opportunities for underrepresented groups

We believe the Government needs to increase its efforts to close the employment gap for certain groups across the *whole* economy, particularly for certain ethnic groups, young people and disabled people.

We do not see atypical work as an immediate solution to creating work opportunities for underrepresented groups, particularly for disabled people, due to the need to support people into work, and employers' lack of awareness of reasonable adjustments.

Government recently published 'Improving lives: The Work, Health and Disability Green Paper'. We welcome the extensive package of proposals as a key opportunity for securing rights to equal opportunities for work for disabled people as set out in Article 27 CRPD.[43] We recommend that the Work and Health programme should offer the types of specialist, tailored support found to be most effective on the Work Choice programme for disabled people with complex needs. It should draw on evidence from disabled people about the types of support they find most effective such as peer support[44] and draw upon evidence-based and cost-effective approaches such as Individual Placement and Support (IPS)[45] (in mental health services) and supported employment (in learning disability services) which have successfully supported people to achieve paid work outcomes.[46,47] The new programme should facilitate partnership work with local and specialist providers including disabled people's organisations to ensure individuals' needs are met.

Under the Equality Act 2010, employers have a responsibility not to discriminate against disabled people in relation to job opportunities, and to provide reasonable adjustments for them to access and progress in the workplace. Evidence suggests however that some employers may be falling short in offering employment

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[43] Ref to our consultation response.

[44] McEnhill, L, Steadman, K and Bajorek, Z (2016) Peer support for employment: a review of the evidence. The Work Foundation and Disability Rights UK. Available here:). www.theworkfoundation.com/wp-content/uploads/2016/11/404_Peer-Support.pdf

[45] IPS has seven key principles, each of which is needed for the service to work well. They include focusing on paid employment of an individual's choice, not sheltered work or lengthy job preparation, and support that continues once the person gets a job and that is provided together with clinical care and welfare benefits advice. The service should be *individual* to a person's needs and wishes; offer rapid *placement* in work; and provide ongoing *support* for as long as it is needed.

[46] Sainsbury Centre for Mental Health (2009) Briefing 41. Commissioning What Works: The economic and financial case for supported employment. Available here: https://www.centreformentalhealth.org.uk/briefing-41-commissioning-what-works

[47] Sainsbury Centre for Mental Health (2009) Briefing 37. Doing what works: Individual placement and support into employment. Available here: https://www.centreformentalhealth.org.uk/briefing-37-doing

opportunities to disabled people.[48] [49] We believe that work coaches and Job Centre Plus staff need to understand employers' obligations under the Equality Act 2010 to provide reasonable adjustments, providing practical advice to diverse employers and helping disabled employees negotiate reasonable adjustments.

We also believe that any proposals to improve people's rights and their understanding of their rights has the scope to support underrepresented groups. It is important that equality is properly factored into any activities that emerge from this review to ensure that no group is suffers disproportionate disadvantage.

5. New business models

How can government – nationally or locally – support a diverse ecology of business models enhancing the choices available to investors, consumers and workers?

Technology is creating new opportunities and new models for business growth. We think this needs to be built on a firm foundation that provides fair access to work opportunities to all and that provides protection to all. Government has particular obligations, such as those under ICESCR, to provide a legal and institutional framework to ensure workplace relationships are fair. Government and its agencies can also provide employers and workers with easily accessible information about their duties and rights. Companies that do not operate lawfully must be held to account to prevent unlawful and exploitative practices and to ensure that they do not undercut or undervalue those who do comply with their employment obligations

Obligations on Government to provide a fair framework
The UK is party to seven human rights treaties and although the rights contained in these treaties are not directly legally enforceable in UK courts, they do constitute binding obligations in international law. By ratifying the treaties, the UK has pledged to make sure its domestic laws and policies comply with them.

In the Commission's view:

- Government should clarify employment law since old definitions for employment status do not easily apply to new ways of working. This is leaving individuals without the rights they should expect, could limit the effectiveness of our enforcement agencies, and contributes to making Britain a place which is not fair for everyone

[48] House of Lords Select Committee on the Equality Act 2010 and Disability. The Equality Act 2010: the impact on disabled people March 2016 Available here: https://www.publications.parliament.uk/pa/ld201516/ldselect/ldeqact/117/11702.htm
[49] EHRC (2012) Working better: the perfect partnership – workplace solutions for disabled people and businesses. https://www.equalityhumanrights.com/en/publication-download/working-better-perfect-partnership-workplace-solutions-disabled-people-and.

- We support CIPD's recommendation to amend to the Employers Relations Act 1996 requiring employers to provide workers, and not just employees, with a written copy of their terms and conditions after two months of employment.[50] This should be set out in clear and accessible language.

- There needs to be better data on who is in atypical work (by protected characteristic) and the reasons why. This will help identify whether certain groups are more likely to be represented in these numbers, if there are any ongoing trends which help identify whether there further action needs to be taken to ensure fair and equitable working practices and conditions and whether there are opportunities which can be further understood and exploited.

Tools to help companies behave lawfully

Most businesses want to behave lawfully, but information can be hard to find or to access. Government can provide the tools to help companies comply with the law.

We welcome Government's continued commitment to the UN Guiding Principles on Business and Human Rights and believe this offers a simple and proportionate framework to encourage responsible business. When companies operate with a culture of respect for human rights, they become brands, partners, investments and employers of choice. The Government supported the Commission's production of guidance on this area, and we have received excellent feedback from companies, board members, ethical organisations and the UN.

We recommend that Government should:

- Continue to highlight its expectations of business in light of the UN Guiding Principles in domestic labour markets as well as international;

- encourage employers to provide clear and simple information to employees, workers and individuals on their employment status and the rights this entitles them to;

- should work in partnership with ACAS, CIPD and others to provide companies with the principles of best practice working and responsible employment they should adhere to when resourcing their business models to ensure that flexibility benefits all parties. (Article 7, just and favourable conditions at work).

[50] CIPD. 2017. *Op Cit.*

Providing clarity and support for workers

We believe workers should have a greater understanding about their employment status and their employment rights, including where to go if they have a complaint or need to access redress.

We recommend that:

- Legislation should provide protection to individuals where employers rely on clauses that have the effect of classifying an individual as self-employed rather than a worker.

- The Government should work with advice giving bodies such as ACAS, CAB and trade unions to provide guidance to individuals on what their basic rights are depending on their type of employment.[51] This should include information on where they can go to if they have a complaint or need redress. This would support the Government's commitment to UN Guiding Principles on Business and Human Rights.

- In collaboration with industry and government, the Commission has produced "Know Your Rights" for the cleaning industry which could be adapted for a wider audience.

Enforcement

Companies that do not operate lawfully must be held to account to create a level playing field and avoid unscrupulous businesses undercutting organisations which incur financial costs to comply with the law.

We welcome the Government's continued work in preventing people from exploitation evident in:

- the Modern Slavery Act;
- the increased powers provided to the GLA to create the Gangmasters and Labour Abuse Authority;
- the new Director of Labour Market Enforcement; and
- HMRC's naming and shaming of businesses that pay below the minimum wage.

We recommend that Government ensure that these agencies have sufficient resources to meaningfully monitor and enforce compliance with existing employment rights across the economy and ensure people are not being falsely or unintentionally categorised as self-employed rather than as a worker.

[51] CIPD. March 2017. *Op Cit.*

We agree with CIPD's recommendation that Government should increase resources to ACAS so that it can work proactively with organisations to improve their working practices if they are in danger of falling foul of the law through a lack of resources or knowledge.[52] This would enable the GLAA to support improving practices rather than resorting to enforcement activity and fines.

[52] *Ibid.*